COURT NO. 2

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CENTRAL EXCISE REFERENCE NO. 1 of 2007
(Old No. 143 of 1999)

Commissioner of Central Excise,
Meerut.

.....Appellant

Versus

M/s Indian Glycols Ltd.,
Kashipur, District Nainital.

.....Respondent

Sri Arvind Vashistha, learned Assistant S.G. for the Revenue.
None on behalf of the respondent.

Dated: 2nd November, 2007

Coram: Hon'ble P.C. Verma, J.
Hon'ble M.M. Ghildiyal, J.

The present central excise reference has been made by Customs Excise & Gold (Control) Appellate Tribunal, New Delhi (for short, 'CEGAT') at the instance of the Revenue, which arises out of the CEGAT's final order no. A/78/98-NB dated 2nd February, 1998. The following question, said to be substantial question of law, has been referred for the opinion of this Court :

> ***"Whether modvat credit under 57-Q can be allowed on the goods i.e. wires & cables and fork lift covered by the definition of the capital goods as provided under explanation (1)(a) to (1)(c) to Rule 57-Q of Central Excise Rule 1944 at the relevant period?"***

2- After perusal of the record we find that copies of the necessary documents i.e. copies of the orders of the authorities below, copy of CEGAT's order dated 2.2.1998, etc. have not been sent by the Tribunal along with the statement of the case. However, at para 5 of the statement of case it is mentioned that copy of judgment of Larger Bench is enclosed with the statement of case. Which reads as under :

> **"At this stage, it is appropriate to mention that the Honourable President of the Tribunal constituted a Larger Bench in view of the difference of opinion among various Benches of the Tribunal on the scope of interpretation of Explanation to Rule 57-Q defining the expression "capital goods". That judgment of the Larger Bench (comprising three Members) has since been delivered. It has discarded the narrow view advanced by the Revenue (copy enclosed)"**

3. In the absence of these material documents, it is impossible for us to give our opinion on the question of law referred to this Court. Accordingly, the reference application is dismissed without any answer to the question of law referred to us.

(M.M. Ghildiyal, J .) **(P.C. Verma, J.)**

Prabodh